

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

HILTON HAWAIIAN VILLAGE, LLC,

Respondent.

CASE NO. OSH 2009-14

ORDER NO. 322

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference in this matter held by the Hawaii Labor Relations Board (Board) on June 18, 2009, and attended by Herbert B.K. Lau, Deputy Attorney General, for Complainant, and Lani Bjork, for Respondent, IT IS HEREBY ORDERED THAT:

A. The issues to be determined at trial are:

1. Citation 1, Item 1 (29 C.F.R. 1910.134(e)(1))

Whether Citation 1, Item 1, including the characterization as "Serious" and the associated penalty of \$1,875.00, resulting from Inspection No. 311436042, was valid and proper.

Citation 1, Item 1 alleged:

29 CFR 1910.134(e)(1) [Refer to chapter 12-64.1, HAR] was violated because:

Housekeeping employees required to use N95 masks were not provided a medical evaluation. Use of a respirator without a medical evaluation can cause aggravation of a pre-existing cardiac or pulmonary disorder.

2. Citation 1, Item 2 (29 C.F.R. 1910.212(a)(5))

Whether Citation 1, Item 2, including the characterization as "Serious" and the associated penalty of \$1,875.00, resulting from Inspection No. 311436042, was valid and proper.

Citation 1, Item 2 alleged:

29 CFR 1910.212(a)(5) [Refer to chapter 12-80.1, HAR] was violated because:

Two portable fans were found not properly guarded potentially exposing employees to portions of the fan blade. Exposure to fan blades when fans are being used could potentially expose employees to serious injuries.

3. Citation 1, Item 3 (29 C.F.R. 1910.304(g)(5))

Whether Citation 1, Item 3, including the characterization as "Serious" and the associated penalty of \$1,875.00, resulting from Inspection No. 311436042, was valid and proper.

Citation 1, Item 3 alleged:

29 CFR 1910.304(g)(5) [Refer to chapter 12-89.1, HAR] was violated because:

The grounding path to a Sanyo Refrigerator and a UL listed surge protector were found not to be permanent, continuous, and effective. Employees exposed to ungrounded equipment are potentially exposed to serious electrical hazards.

4. Citation 1, Item 4 (29 C.F.R. 1910.305(b)(2)(i))

Whether Citation 1, Item 4, including the characterization as "Serious" and the associated penalty of \$1,875.00, resulting from Inspection No. 311436042, was valid and proper.

Citation 1, Item 4 alleged:

29 CFR 1910.305(b)(2)(i) [Refer to chapter 12-89.1, HAR] was violated because:

Three duplex receptacles were found available for use with no faceplates to prevent accidental contact to exposed live parts.

Employees exposed to live wire/parts of receptacles potentially exposes employees to serious electrical injuries.

5. Citation 2, Item 1 (29 C.F.R. 1910.134(f)(2))

Whether Citation 2, Item 1, including the characterization as "Other" resulting from Inspection No. 311436042, was valid and proper.

Citation 2, Item 1 alleged:

29 CFR 1910.134(f)(2) [Refer to chapter 12-64.1, HAR] was violated because:

Housekeeping employees required to use N95 tight-fitting, air-purifying, half-mask dust masks were not provided fit tests and maintenance employees were not provided annual fit testing. The use of a respirator without a fit test potentially exposes the employees to the chemicals they are using due to the respirator not fitting properly which could cause inhalation irritation.

- B. The deadline for the parties' final naming of witnesses is **July 20, 2009**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with each witness's addresses and the general subject to which the witness will testify, to the other party and to the Board by this date.
- C. The discovery cutoff date is **August 19, 2009**. The discovery cut-off is the date by which all responses to written discovery, including requests for admissions, shall be due and by which all depositions shall be concluded. The parties are advised to initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this requirement.
- D. Trial in this matter is scheduled for **September 23, 2009 at 9:00 a.m.** in the Board's hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813. The trial may be continued by the Board until completed.
- E. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v. HILTON
HAWAIIAN VILLAGE LLC
CASE NO. OSH 2009-14
ORDER NO. 322
PRETRIAL ORDER

DATED: Honolulu, Hawaii, June 22, 2009.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair


EMORY J. SPRINGER, Member


SARAH R. HIRAKAMI, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Herbert B.K. Lau, Deputy Attorney General
Lani Bjork